

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3171 of 1995
with
SCA No.6342 of 1995 & SCA No.10711 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

Hon'ble Mr.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

ASHOK ORGANIC INDUSTRIES LTD & 1

Versus

THE SALES TAX OFFICER⁵ SURAT &3

Appearance:

MR KN RAVAL for Petitioner
M/S MG DOSHIT & CO for Respondent No. 1
DS AFF.NOT FILED (N) for Respondent No. 3
MR KS NANAVALI for Respondent No. 4

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/09/1999

ORAL JUDGEMENT(Per: Patel-J)

The petitioner no.1 was a member of the Gujarat Alcohol Based Industries Development Association (hereinafter referred to as the Association). The said Association filed a Special Civil Application No. 1655 of 1990 which was heard and decided by the Division Bench of this Court. The decision is reported in the case of Guj-Chem Distilleries Pvt. Ltd vs. State of Gujarat & anor. in 96 STC 37. The petition preferred by the Association was also heard along the petition filed by Guj-Chem Distilleries Pvt.Ltd. The Division Bench, after considering the decisions of the Apex Court rejected the petitions and discharged the Rule with costs. The petitioners were directed to pay to the respondents, the sales tax amount payable by them on the Industrial Alcohol for the period between March 24,1990 and October 21,1991. The petitioners and members of the Association did not pay the sales tax in view of the interim order passed by the court earlier. However, by judgment and order, the petitioners were directed to pay to the respondents the amount of sales tax for the said period on or before December 31,1994. It is required to be noted that a contention was also raised with regard to the recovery of the price of Industrial Alcohol at a rate higher than the controlled price. The Division Bench held as under:

" ...Lastly , there is also no substance in the contention raised by the learned advocate for the petitioners that the respondents have recovered sales tax because they have charged more than the controlled price. Whether or not the respondents have charged more than the controlled price cannot be decided in these petitions nor can it be held that the so called "additional price" is recovered towards the amount of sales tax."

#. The petitioners got the benefit by way of interim relief but as petition was dismissed, the Association moved the Apex Court and the Apex Court passed the following order:

" The petition for special leave is dismissed. However, time for payment which is specified as 31st December 1994 by the High Court is extended upto 15th January 1995.

Mr. K.N.Rawal, learned counsel for the petitioners says that the distilleries have collected more price than due under law from the petitioners-purchasers. If they say so, nothing

prevents them from adopting such remedies as are open to them in law in that behalf."

#. Thus it is very clear that the petitioners were required to pay to the respondents the amount of sales tax for the period mentioned earlier. Despite the directions, and even after the extension of period, these petitioners did not bother to pay the amount. As a matter of fact, it was the duty of the petitioners to pay to the State Government the amount of tax. However, as the petitioners were avoiding the payment of sales tax ultimately the respondent no.8 of SCA No. 1655 of 1990 was called upon by the State Government to make the payment. He being the dealer of the goods, it was his liability as contended by the State Government. But it appears that the State was provided with details and it is thereafter the State Government issued show cause notices to the persons who failed to pay the tax despite the directions. And as there was no reply, the State Government froze the bank account of the petitioners. It is only thereafter the petitioners rushed to this court with a prayer to direct the Bank concerned to permit the petitioners to operate the Bank Account. The court considered the facts and circumstances and passed an interim order on 26.4.1995.(in different petitions on different dates but the orders passed were similar). The petitioners were directed to file an affidavit stating the details of purchase during the period in question for which interim relief was operative. They were directed to supply the figure of tax and interest. The court thereafter directed the consumers i.e. the petitioners to pay the amount of Sales Tax and directed the dealer to pay the amount of interest.

#. On behalf of the petitioners it is submitted that the original respondent 8 of Spl.C.A. No. 1655 of 1990 has recovered more than the controlled price and therefore, the petitioners were not liable to pay the sales tax as demanded. According to the petitioners, the liability can be fastened only on the basis of the controlled price. As against it, it is pointed out by Mr.. Nanavati that notices have been issued from time to time, but no grievance whatsoever has been raised and only after freezing the bank account such a grievance is raised. He further contended that the petitioners are liable to pay tax on sale price.

#. Mr.. Doshit learned advocate appearing for the State Government contended that no relief is prayed on the ground that the dealer had charged at excessive rate than

permissible. The learned advocate for the petitioners submitted that as the demand was raised, the petitioners were justified in raising a grievance. He submitted that even the Apex Court has permitted to raise the grievance before the appropriate forum.

#. The learned advocate submitted that a petition has been filed which is pending before this court with regard to excess price. In our opinion, the submission is meritless. We will point out that the sale price is defined and tax is levied on the sale price.

#. The learned advocate submitted that no show cause notice has been issued and straight way the bank account has been freezed by the State Government. He drew our attention to several prayers made in the petition. The contention is that without issuance of prior notice, bank account could not have been freezed. It is required to be noted that the petition is filed by a public limited company through its Managing Director. The affidavit reads as under:

" I, J.C.Desai, am the authorised representative of the petitioner no.1 and 2 herein and I accordingly do hereby on solemn affirmation declare and state for and on behalf of the petitioners nos 1 and 2 herein that what has been stated hereinabove are true to the best of my knowledge, information and belief and I believe the same to be true. All annexures are true copies of the original documents of which they purport to be the copies"

On reading the affidavit it is very clear that it is no affidavit in the eye of law. Vague averments have been made stating that whatever has been stated in the petition is true to the best of knowledge, information and belief and the deponent has believed the same to be true.

#. In view of several decisions of the Apex Court and this court, vague affidavit should not be accepted, since this Court has held in Civil Misc. Application No.151 of 1997 in the case of Vasantbala A Mehta vs. Dolat Anant Valia New High School as under:

"...When a petition is presented before the Court, it must separately and specifically state facts(i) based on personal knowledge, (ii) based on information and (iii) based on belief, and

petitioner must give source of information and if based on belief, then grounds of belief. There must be separate paragraphs for each submission which can be dealt with. Such submissions may be based on facts or law. In a writ petition, it is the duty of the ld. Advocate to quote relevant provision of law which would enable all concerned to deal with the matter efficiently. The prayer clause should be separate in a paragraph, and final relief and/or interim relief, if prayed, in separate sub-paras.

Apex Court in the case of A.K.K. Nambiar vs. Union of India reported in AIR 1970 SC 652, emphasising the importance, has observed as under:

" The reasons for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In absence of proper verification, affidavits cannot be admitted in evidence"

In case of Shivaji Rao vs. Dr. Mahesh Madhav reported in AIR 1987 SC 294 in para: 38, the Court observed as under:

" Out attention was drawn by the learned counsel Dr. Singhvi on the observations of this court in the Barium Chemicals Ltd.. V. The Company Law Board, 1966 (Supp.) SCR 311: (AIR 1967 SC 295), where at page 352(of SCR) (at p. 319 of AIR) of the report the court observed that where evidence was adduced by affidavits, such affidavits might be properly verified either on knowledge or from sources. But the basis of such knowledge or source of information must be clearly stated. This was laid down as early as 1909 Jenkins, C.J. and Woodroffe, J in Padmabati Dasi vs. Rasik Lal

Dhar (1909) ILR 37 Cal.259 where the Division Bench of the Calcutta High Court observed that the provisions of Order XIX, Rule 3 of the Code of Civil Procedure must be strictly observed; every affidavit should clearly express how much is a statement of the deponent's knowledge and how much of the statement was in his belief, and the grounds of belief must be stated with sufficient particularity, this has been followed more or less universally by courts in matters where reliance is placed on affidavits. This view has been reiterated by this Court in State of Bombay vs. Purshottam Jog Naik 1952 SCR 674: (AIR 1952 SC 317) If is on this principle that Dr. Singhvi urged that the original petition should not have been entertained because of the defective affidavit in this case. Undoubtedly the affidavit and the petition were defective as mentioned hereinabove."

" In the proceedings before the Court, ordinarily the Court accepts the sworn statement made in the petition. The Court accepting such statements passes even interim orders. Therefore, it is the duty of the party filing petitions before the Court to make true, correct and accurate statement, stating as to what portion of the petition is true to his personal knowledge and what portion of the petition is true to his information or belief stating the reasons thereof."

#. It is required to be noted that Mr., Doshit learned advocate has been instructed by the officer of the State Government to state that the petitioners were served with the notice calling upon the petitioners to make payment. It is also the case of respondent no.4, the dealer. We are of the opinion that the deponent must state specifically in the affidavit as to what part of the affidavit is true to his knowledge and what part of the affidavit is true, according to his belief or information and the deponent is required to give reasons for his belief and in case of information the source of information. It is only thereafter the other side has to reply to the averments made in the application.

#. The learned advocate for the petitioner submitted that it is a case of over charging and respondent no.4

cannot recover more than the price fixed by the Government. According to his contention respondent no.4 has included in the bill, service charges etc. Mr. Nanavati appearing for respondent No.4 submitted that a writ petition with regard to this subject matter is already filed in this court and the same is pending for disposal. The petitioners were required to pay the amount as per the invoice and sales tax in accordance with law. Suffice it to say that the contention is required to be rejected as the petitioners were called upon by the Division Bench to make payment and the petitioners failed to discharge their obligation. It is also required to be noted that the petitioner being aggrieved by the decision of the Division Bench reported in 96 STC 37 approached the Supreme Court by preferring SLP and the Supreme Court rejected the SLP and extended time for making payment as stated in its order which has been reproduced in earlier part. Thus it was the duty of the petitioners to make payment during the extended period. Even thereafter the petitioners neither bothered to make payment nor bothered to approach the appropriate authority raising a grievance about excess billings. In our opinion when the Division Bench of this Court has directed the petitioners to make payment and despite the fact that the Apex Court extended the period for making payment the petitioners did not make the payment within extended period, the petitioners have no case at all. We would like to say that this is not a case wherein we should exercise our extra ordinary jurisdiction. It was the duty of the petitioners to pay the amount of sales tax in accordance with law and as they failed to make the payments in accordance with law, the State is entitled to recover the same with interest in accordance with law.

##. It is required to be noted that the sale price is defined in section 29 of the Gujarat Sales-tax Act, which reads as under:

" Sale price" means the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation when such cost is separately charged"

Reading the aforesaid section it becomes very clear that sale price includes any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof. It is not the say that

cost of insurance for transit or of installation has been separately charged so as to exclude from sale price. In view of this specific provision, the contention raised by the petitioners is without merit. Hence the petition stands rejected. Stay on the attachment stands vacated. Rule discharged with costs.

SCA No.6342 of 1995

##. Mr. Pandya learned advocate submitted that his client was a member of the Association. However, under the provisions of the Sales-tax Act it was for the dealer to submit the return before the authority but the dealer has not done so. It is for the authority to determine what is the liability of the sales tax and only thereafter the question of making payment would arise. We do not agree with the said contention as the dealer, the original respondent no.8 in Spl.C.A. No.1655 of 1990 and the petitioner in Spl.C.A. No. 772 of 1990 has already placed on record the details. However, the undisputed facts are that present petitioner viz. M/s Reine Chemicals who has preferred Spl.C.A No. 3642 of 1995 has purchased the goods in question from Shree Chalthan Vibhag Khand Udyog Sahakari Mandali Ltd. respondent no.4 in the present petition and respondent no.8 in Spl. C.A. No. 1655 of 1990. Even the State has accepted the figures and therefore, it was the boundan duty of the petitioner to make payment. It is also required to be noted that the petitioner was directed to place on record the details of purchase during the relevant period including the amount of tax and the interest. In the similar facts and circumstances of the case, Spl. C.A. No. 3171 of 1995 has been rejected and this petition also should be rejected. In view of the aforesaid circumstances the petition stands rejected. Interim relief stands vacated. Rule discharged with costs in all matters.

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